

CHAPTER 3 SALES TAX

The Tribal council of the Smith River Rancheria (hereafter "Tribe") hereby ordains as follows:

Section 1. Sales Tax

Any business doing business on the Rancheria shall pay a sales tax to the tribal taxing authority equal to 7.5% of the sales price of any tangible personal property subject to this ordinance (hereafter "property") sold to any customer.

For purposes of this section, a business is doing business on the reservation when it is physically located on the reservation, either temporary or permanently, or when located outside the boundaries of the reservation, it negotiates a sale to a consumer at its place of business, but agrees to deliver the purchased item to the reservation. A construction contractor performing a construction contract on the reservation is an example of a business doing business on the reservation. A business soliciting and receiving orders through mail order catalog is not doing business on the reservation within the meaning of this ordinance.

Section 2 Definitions

1. "Business" means any person engaged in an activity with the object or result of gain, benefit or advantage for the person so engaged, either direct or indirect, and where appropriate to the context in which the term is used, the activity itself.
2. "Consumer" means any person who purchases any property from any business doing business on the reservation where the purchase occurs on the reservation.

For purpose of this section, a purchase occurs on the reservation when property is purchased from a business physically located on the reservation or from a business physically located outside the boundaries of the reservation, but delivered to the consumer on the reservation, but delivered to the consumer on the reservation by the business directly or through a third party such as a common carrier.

3. The term "person" includes but is not limited to any individual, firm co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assigner for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, the State of California, any county, city and county municipality, district, or

other political subdivision of the State of California, another state, or its political subdivisions, the Tribe, or any of its political subdivisions or joint powers agencies of which it is a member, any other tribe or its political subdivisions, or any other group or combination acting as a unit.

4. "Purchase" means and includes:
 - A. Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of property for a consideration. "Transfer of possession" includes only transactions found by the taxing authority to be in lieu of a transfer of title, exchange, or barter.
 - B. A transaction whereby the possession or property is transferred by the seller retains the title as security for the payment of the price.
 - C. A transfer for a consideration of property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.
 - D. Any lease of property in any manner or by any means whatsoever, for consideration.
5. "Reservation" or "Rancheria" means Smith River Rancheria.
6. "Sale or "Sold" means and includes:
 - A. Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of property for a consideration. "Transfer of possession" includes only transactions found by the taxing authority to be in lieu of a transfer of title, exchange, or barter.
 - B. The producing, fabricating, processing, printing, or imprinting of property for consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.
 - C. The furnishing and distributing of property for a consideration by social clubs and fraternal organizations to their members or others.

- D. The furnishing, preparing, or serving for a consideration of food, meals, or drinks.
 - E. A transaction whereby the possession of property is transferred by the seller retains the title as security for the payment of the price.
 - F. A transfer for a consideration of the title or possession of property which has been produced, fabricated, or printed to the special order of the customer, or any publication.
 - G. Any lease or property in any manner or by any means whatsoever, for a consideration.
- 7. "Sales Price" means total amount valued in money paid or agreed to be paid itself or charged to the customer for any item of property in a sale between the transferor and the transferee, excluding any separate itemized charges for installing or servicing the property.
 - 8. "Sales Tax" means the tax imposed by Section 1 of this ordinance.
 - 9. "Tangible personal property subject to this ordinance" or "property" means construction materials and components, and other tangible personal property incorporated into, attached to, or affixed to, real property by contractors in the performance of a construction contract and which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of the real property. It also means and includes fixtures, which includes items accessory to a building or other structure that do not lose their identity as accessories when installed. "Tangible personal property" as used in this paragraph means personal property which may be seen, weighed, measured, felt, or touched, or which is any other manner perceptible to the senses.
 - 10. "Tribal taxing authority" means the Tribal Council of the tribe established and authorized by this ordinance to assess, collect and remit sales tax.
 - 11. "Tribe" means the Smith River Rancheria.

Section 3. Returns

- 1. Any business subject to sales tax shall report all sales subject to the tax on the tribal taxing authority as provided by this section.
- 2. Any business subject to sales tax shall report all sales subject to the tax of the tribal taxing authority on such forms and at such times as the taxing

authority shall prescribe by regulation, as authorized by Section 5 of this ordinance.

Section 4. Payment

Each business shall pay tax to the tribal taxing authority upon demand of the taxing authority. Failure to pay the tax within 10 days of the demand shall render such business liable to the authority as on any other debt. Moreover, the authority shall have the right to set off the amount owing as sales tax against the monies the authority or the Tribe may otherwise owe the taxpayer. This remedy the authority may have to collect or enforce the payment of sales taxes due and unpaid under this ordinance. Nothing contained in this ordinance shall be constructed as waiving the sovereign immunity of the Tribe, its tribal government or the tribal taxing authority.

Section 5. Tribal Taxing Authority

1. Authority. The Tribal Council of the Tribe shall act as the Tribal taxing authority to administer and enforce the provisions of this ordinance pursuant to this Section 5. The Tribal taxing authority shall act as a branch of the tribal government for this purpose and shall exercise all of the powers of the tribal government necessary or convenient to the administration and enforcement of this ordinance; the Tribal taxing authority shall administer and enforce this ordinance strictly in accordance with its terms and subject to the procedures and limitations expressed herein.
2. Powers. In order to administer and enforce the provisions of this ordinance, the Tribal taxing authority shall have power to:
 - A. Appoint one or more officials to act as tax officials and to specify that said officials shall have the right to assess and collect sales taxes according to regulations adopted by the taxing authority governing board.
 - B. To adopt regulations governing taxpayer reporting responsibilities, procedures for enforcing compliance with reporting responsibilities, procedures for assessing tax liability, procedures for collecting taxes that are due but unpaid, and procedures for remitting collected taxes to the Tribe. Said regulations shall only become effective immediately upon promulgation. The regulations shall, at a minimum:

- (1) Provide the taxpayer with prior notice of assessed tax liability and an opportunity for a hearing before a hearing officer or panel shall be final for the Tribe;
- (2) Protect the taxpayer from paying both a state sales tax and a tribal sales tax with respect to the same sale by providing a procedure whereby the taxpayer can establish to the satisfaction of the taxing authority that has it done everything legally required under state law to exempt the sale from the state sales tax and that the state Board of Equalization nevertheless has assessed and demands payment of the state sales tax with respect to the sale. If the taxpayer makes such a showing within reasonable time limits established by taxing authority regulations, the taxing authority at its option shall waive the tribal sales tax, refund the tax if already collected or enter an agreement with the taxpayer under which the taxpayer assigns its rights to the taxing authority and the taxing authority agrees to indemnify and hold the taxpayer harmless from any costs associated with opposing the state sales tax and any state sales tax liability in order that the taxing authority can legally challenge the state's authority or jurisdiction to impose its tax with respect to the sale; and
- (3) Provide that all sales taxes collected by the authority shall be deposited in a separate interest bearing account to the credit of the Tribe until remitted to the Tribe and that the Tribe's share of all taxes collected with respect to a sale shall be remitted to the Tribe within three (3) months after the time to appeal any decisions of the taxing authority with respect to a sale has expired for final decisions of taxing authority has been rendered after appeal or any challenge to the state sales tax is finally resolved. In the case of the sales tax imposed in connection with the contractor's performance of a construction contract on the reservation, said taxes shall be remitted to the Tribe within 30 days after final payment had been made to the contractor, unless the taxing authority has exercised its option to challenge the state sales tax in which case the funds shall be remitted to the Tribe one (1) month

after the challenge is finally resolved in favor of the taxing authority.

- C. As one means of collecting taxes that are due but not unpaid to set off the uncollected taxes against any debts owed by the taxing authority to the taxpayer. For purposes of collecting such taxes only and only to the extent necessary for that purpose, the Tribe hereby assigns to the taxing authority any debts that it now owes or may incur in the future to the taxpayer; and
 - D. To take any other action necessary to administer or enforce this ordinance, including filing in its own name or the Tribe's name in any court of competent jurisdiction to collect sales taxes that are due but unpaid; provided that his power does not expressly or impliedly waive the Tribe's or the taxing authority or the Tribe to any cross-claim, counter-claim, third party claim, or other counter-suit.
3. Notice. Whenever notice is required under this ordinance, it shall be deemed given when personally delivered or deposited in the U.S. mail with proper postage affixed thereto and addressed to the party to whom the notice is given as provided in an official statement of the party's address on file with the Tribe and the taxing authority. A taxpayer shall file its official statement of address with the taxing authority.

Section 6. Effective Date and Legislative History

This ordinance shall become immediately effective upon approval of the Tribal Council of the Smith River Rancheria and shall remain in effect until repealed.

This Chapter was adopted on February 27, 1996, as the Ordinance of the Tribal Council of the Smith River Rancheria, Adopting a Tribal Sales Tax (Ordinance No. 96-04).